

In the High Court of Judicature at Madras

Dated: 31/10/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.21830 of 2003

and

WPMP.No.32911 of 2003

A.C. Kiruba Shankari .. Petitioner

-Vs-

1. State of Tamil Nadu  
rep. by its Secretary to Government  
Health Department  
Fort St. George, Chennai 9.

2. The Secretary  
TNPCEE 2003  
(Tamil Nadu Profession Courses  
Entrance Examination 2003)  
Anna University, Chennai 25.

3. The Secretary  
Selection Committee  
for Medical Education  
No.162 Periyar E.V.R. Salai  
Kilpauk, Chennai 600 010. .. Respondents

Petitioner filed under Article 226 of the Constitution of  
India praying for issuance of writ of mandamus as stated therein.

For petitioner : Mr. K. Selvaraj

For respondents: Mr. V.R. Rajasekaran  
Special Govt., Pleader (Edun.)

:ORDER

By consent of both parties, writ petition itself is taken up  
for disposal.

2. The petitioner has filed the above writ petition to issue a writ  
of mandamus directing the respondents to allot her one MBBS seat, reserved for  
the children of Ex-servicemen for the academic year 2003-20 04.

3. According to the father of the petitioner, who sworn to an

affidavit in this writ petition, since the petitioner is a daughter of Ex-serviceman (Sergeant of Indian Air Force), applied for admission to MBBS course for the Session 2003-2004 under Group 1 Special Category. She belongs to B.C. category. She has secured total marks 293.81 out of 300. Though she is in the 15th rank under special category for children of Ex-servicemen, she was not selected. There are six seats reserved for children of Defence Personnel and it is categorised as two seats for children of Service Personnel Killed in action; two seats reserved to children of Ex-servicemen and two seats for the children of Serving Defence Personnel. Since there is no children of Service personnel killed in action for the academic year 2003-2004, out of the said two seats one seat is to be re-allotted to the children of Ex-servicemen and another seat to Serving Defence Personnel. It is the claim of the petitioner that this is the practice, which was uniformly followed by the respondents all these years. Inasmuch as no candidate was available under the category Service Personnel Killed in action for the academic year 2003-2004, as followed in the previous years, one seat to be given to the children of Ex-servicemen and another to the Serving Defence Personnel. Instead of resorting to such procedure, the respondents have committed a mistake in transferring two seats reserved for Service Personnel Killed in action to the General category, which cannot be sustained. Because of the said action, the petitioner is deprived of getting admission for the MBBS course under the special category for the academic year 2003-2004.

4. With reference to the claim of the petitioner, the Deputy Director of Medical Education / Secretary (Incharge), Selection Committee, Chennai 10 - third respondent herein has filed a counter affidavit, wherein it is stated that the petitioner has secured total marks 293.81. She belongs to B.C. category. She applied for admission in MBBS course in the session 2003-2004. She also applied for admission in MBBS course in one of the two seats reserved in favour of the Exservicemen as a special category. Since the petitioner is not coming within the zone of consideration for admission under General category, her application has to be considered in the order of merit for admission in one of the two seats reserved in favour of children of Exservicemen as a special category. The two seats in MBBS course were reserved each for the children of Ex-servicemen, children of Serving Defence Personnel and children of Service Personnel Killed in action for the year 2003-2004 session. The selection and allotment under special categories shall be made by way of Horizontal Reservation. Selvi. Sowmya (total marks 296.49); Praveen Kumar (total marks 294.31) were eligible for admission in the seats reserved for children of Exservicemen - a special category. The petitioner - Selvi A.C. Kiruba Shankari (total marks 293.81) and one Selvi Sanjeevitha (total marks 294.06) were also considered for selection under special category seats reserved for children of Ex-servicemen according to their ranks fixed and based on their marks. Since Sowmya and Praveen Kumar have secured marks higher than the petitioner - A.C. Kiruba Shankari and Sanjeevitha, they were selected for MBBS course for 2003 -2004 session under special category - children of Ex-servicemen and were allotted to Tanjore Medical College and Tuticorin Medical College respectively. Since no candidates were found eligible among the applicants for the two seats earmarked for the children of Service Personnel Killed in action, the said two seats exclusively reserved under the said special category were added to the

General pool as per Clause 11 of the Prospectus, since those seats could not be transferred to any other special category or kept vacant. Accordingly, the two seats originally reserved for children of Service Personnel Killed in action were filled up among the candidates from the General category. There is no vacancy either under General and Special categories as on date. The cut off date for admitting the candidates as per the Schedule prescribed by the Medical Council of India and the Tamil Nadu Dr. MGR Medical University is 30.09.2003 and as such no admission could be made after the cut off date, even if any seats remain vacant.

5. Heard, Mr. K. Selvaraj, learned counsel for the petitioner and Mr. V.R. Rajasekaran, learned Special Government Pleader (Education) for the respondents.

6. There is no dispute that the petitioner has secured total marks 293.81 and she applied for admission in MBBS course in the session 2003-2004. She also applied for admission in MBBS Course in one of the two seats reserved in favour of children of Ex-servicemen as special category. Clause 15 of the Prospectus of MBBS/BDS Admissions 2003-2004 (in short "the Prospectus") speaks about the Seats reserved for special categories in Government Colleges, which reads as under:  
"15. SEATS RESERVED FOR SPECIAL CATEGORIES IN GOVERNMENT COLLEGES:  
Seats earmarked for the special categories will be allotted following the Horizontal Reservation.  
GROUP - I ( SPECIAL CATEGORIES)

(i) .....

(ii) SEATS RESERVED FOR CHILDREN OF DEFENCE PERSONNEL:  
NO. OF SEATS RESERVED M.B.B.S. B.D.S.

(i) Service Personnel Killed in action 2 '

,

(ii) Ex-servicemen 2 ' 1 (ONE SEAT)

,

(iii) Service Defence personnel 2 ' "

7. There is no dispute that the petitioner's father is an Exserviceman and accordingly the petitioner is eligible to apply for admission to MBBS course in one of the two seats reserved in favour of the children of Ex-servicemen as a special category. As per the information furnished in the counter affidavit, the petitioner stood 15 in serial number under the special category. Details of the candidates applied for admission under special category for children of Exservicemen, marks secured by them etc., are as follows:-

Sl.

No.

Name of the  
candidate

Total

Marks

Communi-ty  
Cut-off  
marks  
Selected  
category  
(General)  
Selected Category  
(Special)

College

1.  
Mukeshkumar  
297.49  
BC  
296.73  
General OC

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Madurai  
2.  
V. Nagalakshmi  
297.15  
OC  
296.73  
General OC

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KMC  
3.  
Kiruba  
296.91  
MBC  
296.73  
General OC

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MMC  
4.  
A. Sowmya  
296.49  
OC  
296.73  
Not eligible  
Ex-servicemen  
Thanjavur

5.  
Harischandra N  
296.41  
OC  
296.73  
50% rule of  
reservation

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Chengalpattu

6.  
Iswarya  
296.06  
BC  
295.41  
General BC  
-----  
Salem  
7.  
Kamalasekaran  
295.91  
SC  
288.88  
General SC  
-----  
MMC  
8.  
Gomathi K  
295.74  
BC  
295.41  
General BC  
-----  
Tirunelveli  
9.  
Cecilia Xavier  
295.57  
MBC  
293.04  
General MBC  
-----  
Madurai  
10.  
Thiyageswaran J  
295.40  
SC  
288.88  
General SC  
-----  
MMC  
11.  
Suganthi P  
294.99  
MBC  
293.04  
General MBC  
-----  
Thanjavur  
12.  
Rajasakkarapani  
294.82

MBC

293.04

General MBC

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Tirunelveli

13.

Praveen P

294.31

BC

295.41

Not eligible

Ex-servicemen

Thoothukudi

14.

D. Sanjeevitha

294.06

BC

295.41

Not eligible

Not eligible

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15.

Kirubashankari

293.81

BC

295.41

Not eligible

Not eligible

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8. It is clear from the above information, Sowmya- Sl.No.4 (296.49); Praveen Kumar - Sl.No.13 (294.31) were eligible for admission in the seats reserved for children of Ex-servicemen as a special category. Since both of them have secured marks higher than the petitioner - A.C. Kiruba Shankari (293.81), they were selected for MBBS course for 2003-2004 session under special category for children of Exservicemen and according to the counter affidavit, they were allotted to Tanjore and Tuticorin Medical Colleges respectively. To this extent there is no quarrel. However, it is the argument of Mr. K. Selvaraj, learned counsel appearing for the petitioner that inasmuch as none eligible for two reserved seats for the Service Personnel Killed in action, as per Clause 15 of the Prospectus, among those two sets, one to be transferred to Ex-servicemen and another one to Serving Defence Personnel, by applying Horizontal Reservation. According to him, instead of following the said procedure, the Selection Committee has transferred two seats reserved for Service Personnel Killed in action to General category. It is his claim that if the Selection Committee followed the Horizontal Reservation as stated in Clause 15 of the Prospectus by distributing the two seats to other two categories, no difficulty in selecting the petitioner under Ex-servicemen special category.

9. In this regard, the learned Special Government Pleader, by pointing out that since no candidates were found eligible among the applicants

for the two seats earmarked for the Service Personnel Killed in action, the two seats exclusively reserved under the said category were added to the General pool as per Clause 11 of the Prospectus, as those seats could not be transferred to another special category or kept vacant. Clause 11 of the Prospectus reads as under:

"11. All India Surrendered / Special Category Seats:

If MBBS / BDS seats earmarked for All India Quota are surrendered by Director General of Health Services, New Delhi and if sufficient number of candidates are not available for allotment against Special Categories, the vacant seats will be added to general pool and will be filled up with candidates from the merit list applying the rule of reservation. "

10. It is clear from the above Clause, if sufficient number of candidates are not available for allotment against Special categories, the vacant seats will be added to General pool and the same will be filled up with candidates from the merit list, by applying rule of reservation. Admittedly, the petitioner has not challenged the said Clause. Further, the petitioner cannot claim that she is not aware of the said Clause, namely Clause 11 of the Prospectus. So long as Clause 11 stands in the Prospectus and in the light of the fact that no candidates were found eligible among the Service Personnel Killed in action, the action of the Selection Committee, transferring those two seats to the General pool cannot be faulted with. Though Clause 15 states that the seats earmarked for the special categories will be allotted following the Horizontal Reservation, there is no Clause, which says that in the absence of eligible candidates, the same has to be transferred to the next reserved special category. It is not the claim of the petitioner that she is entitled allotment under "Service Personnel Killed in action", admittedly, she claims under "Ex-servicemen quota".

11. I have already referred to the fact that for the two seats reserved for Ex-servicemen, Sowmya and Praveen Kumar, who secured higher marks than the petitioner were selected for the MBBS course 2003-2004 session. Inasmuch as Clause 11 of the Prospectus specifically enables the Selection Committee to the effect that whenever seats are not filled up under Special category, those unfilled seats shall be transferred to General category, the respondents are fully justified in filling up those two seats among the candidates from the General category on merit basis, their action is in accordance with the Prospectus and the same cannot be faulted with. Further, the Secretary of the Selection Committee has informed to this Court that there is no vacancy either under General or Special category as on date and no Government Order have been issued to transfer the vacancy under one special category to other special category for being filled up with the candidates applied under other defence categories. It is also brought to my notice that the cut off date for admitting the candidates as per the Schedule fixed by the Medical Council of India and the Tamil Nadu Dr. MGR Medical University is 30.09.2003 and as such, as rightly contended by the learned Special Government Pleader, no admission could be made after the cut off date.

12. In the light of what is stated above, there is no merit in the claim made by the petitioner; consequently, the writ petition fails and the same is dismissed. No costs.

In view of the dismissal of the main writ petition, connected

WPMP., is also dismissed.

Index:Yes

Internet:Yes

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